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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. HEATHER ROSE BROWN, Defendant and Appellant.	C085998 (Super. Ct. No. 15F2440)

During defendant Heather Rose Brown's pregnancy and then while she fed breast milk to her baby she used heroin, methamphetamine, and marijuana. She chose to give birth in a hotel because she knew that if she had the baby in a hospital, authorities would take the baby from her. Defendant ignored warnings from her midwife and others to get help for the baby girl, who died five days after she was born.

The jury found defendant guilty of first degree murder by poison, child abuse, and possession of heroin and marijuana for sale, and found true an allegation the child abuse involved the infliction of injury resulting in death. (Pen. Code, §§ 187, 273a, subd. (a), 12022.95; Health & Saf. Code, §§ 11351, 11359, subd. (b).) The trial court sentenced defendant to a total unstayed determinate term of three years in prison, followed by an indeterminate term of 25 years to life. Defendant timely filed this appeal.

On appeal, defendant contends: (1) no substantial evidence supports causation, i.e., that poison was a contributing cause of death; (2) even in a murder by poison case, the jury must be instructed on and the People must present substantial evidence of premeditation and deliberation; (3) the abstract of judgment and sentencing minutes conflict with the reporter's transcript regarding some fines; and (4) she is entitled to a remand for a hearing at which she can present evidence relevant to a future youthful offender parole hearing. We conclude the discrepancy about the fines is due to a typographical error by the court reporter and the clerical documents accurately reflect the trial court's pronouncement of judgment. We reject defendant's other contentions of error and shall affirm the judgment.

BACKGROUND

Because of the issues raised it is not necessary to detail all the trial evidence; evidence relating to causation will be described in the relevant part of the Discussion.

Trial Evidence

The parties agree in their briefs as to the basic evidence. Defendant used heroin, methamphetamine, and marijuana while pregnant. She knew her sister-in-law's baby was taken away by the authorities for drug use and had her baby in a hotel to avoid a similar scenario. After her baby was born, defendant fed it breast milk, knowing she was passing heroin into the baby's system; she researched the Internet for remedies for addicted babies. Her midwife, relatives, and at least one of her friends, all told her to get medical help for the baby, but she did not do so. The baby died five days after its birth, on

November 3, 2014. Under interrogation defendant said she thought the baby suffocated due to co-sleeping between herself and the baby's father (Daylon Michael Reed)[1], and the baby may have been turned towards a pillow. But she also said she was afraid the baby would be taken away if she sought help; by the time Reed made a 911 call, it was too late.

The defense rested without presenting further evidence.

Closing Arguments

The People argued that during the victim's life, defendant consciously disregarded the harm she caused her baby. The midwife, defendant's mother, and others told her to take the baby to get medical attention. She admitted feeding the baby breast milk while using heroin. She knew if she sought help she would lose both access to heroin and to her baby, and she instead did online research about home remedies for newborn withdrawal from opiates. The baby died from multiple drugs, including heroin and methamphetamine. Baby bottles were contaminated with those drugs. Heroin (converted to morphine by the body) can suppress breathing, and the cause of death was most likely a combination of co-sleeping, heroin, and face-down positioning. Death was no accident because defendant did not act with due caution. Implied malice was shown by her knowledge of the dangers of her actions and failure to take steps to help her baby. The murder was of the first degree because she used heroin and methamphetamine; both were poisons as they each could kill. The fact other causes may have combined to produce death did not change the fact that the poisoning was a contributing factor.

Defense counsel conceded defendant was guilty of child abuse "by failing to take her to medical care and for passing along controlled substances through her body." Causation was not proven because of the confusing nature of the evidence of what *did*

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[1] Reed reached a bargain on lesser charges before trial.

cause death, including the lack of marijuana found in the baby's system. Because many people use heroin and methamphetamine recreationally without dying, they are not poisons. Defendant did not understand the risk of her behavior, and when she saw the baby was not breathing, she promptly summoned aid, but it came too late.

In rebuttal, the People argued defendant didn't even bother to ask law enforcement about the cause of her baby's death, because she *knew*. Any lack of urgency on the part of the people who told defendant to take her baby in for medical care was because they did not know the baby had ingested drugs. Any lack of marijuana in the baby's system was a "red herring" because that was not a contributing cause of her death. Heroin and methamphetamine were most certainly poisons; there was no safe level of heroin for a baby.

The jury convicted defendant as charged, except for an acquittal on a charge of possessing methamphetamine (count 5).

DISCUSSION

I

Contributing Cause of Death

Defendant contends no substantial evidence shows that exposure to drugs caused her baby's death. Although there may have been some ambiguities or even conflicts in the expert testimony, defendant's contention is not persuasive given our standard of review.

A. *Expert Testimony*

Apart from non-expert testimony about the circumstances of the pregnancy, the birth, and defendant's actions after birth, three relevant experts testified.

Ayako Chan-Hosokawa, a forensic toxicologist, testified the baby's system contained Naloxone (Narcan), methamphetamine and amphetamine, morphine (the "breakdown of heroin"), and acetaminophen. There are no clear toxicity levels for babies. Because morphine breaks down in less than a day, heroin was necessarily given

to the baby after birth. Methamphetamine breaks down into amphetamine and is detectable for one to three days, so it, too, was introduced post-birth. Both heroin and methamphetamine can be found in breast milk, as can marijuana. Marijuana was not detected, but the active ingredient (THC) can dissipate quickly. The toxicologist did not find the "marker" for heroin-derived morphine and therefore could only say that morphine was found.

Dr. Ikechi Ogan, who performed the autopsy, testified he had done some 6,000 autopsies, about 300 on infants, and had been working in pathology since 1991. Collecting information from law enforcement and others is part of the autopsy process, and he did so in this case, learning that the baby was found dead in a hotel room with the parents, who were drug users. The victim was unclean, jaundiced, dehydrated, had a vaginal fungal infection (candida), and had such a severe diaper rash that medical attention should have been sought. She had blood pooling (lividity) indicating she had been in a face-down position at some point after death. A preliminary urine screening test he performed was positive for opiates.

In Dr. Ogan's opinion the cause of death was polypharmacy, meaning abuse by multiple classes of drugs, in this case morphine (derived in the body from heroin) and methamphetamine. Based on what he learned from law enforcement he added to his report that the polypharmacy was due to "maternal polysubstance abuse during pregnancy." Methamphetamine can cause seizures and cardiac arrest; heroin can slow breathing potentially to the stopping point, and it "can cause you to die when you have an overdose from breathing problems. So both of these drugs used in the wrong context and wrong doses can lead to death, especially in the pediatric population," which is more sensitive. Each drug on its own can kill someone, and there is no safe amount of either drug for infants. This was not a case of SIDS (Sudden Infant Death Syndrome), which is a diagnosis indicating no other cause can be found. Dr. Ogan agreed that co-sleeping can kill, but he found no indications of co-sleeping death, and ruled it out as a cause of death,

in part because he did not see marks in the eyes or on the face typically found in such cases. He conceded there were some marks on the baby's cheek and temple, but found no injuries around the nostrils, gums, or lips. Nor was jaundice a contributing factor in the baby's death.

Dr. James Crawford-Jakubiak is a pediatrician and professor, and has worked at the UCSF Children's Hospital in Oakland (as the medical director for the Center for Child Protection) for over 20 years. He is board-certified in both general pediatrics and in a sub-specialty known as child abuse pediatrics. He has testified hundreds of times. Heroin "makes people basically stop breathing" and can kill. Infants exposed to heroin *in utero* can experience "neonatal abstinence syndrome," which can cause vomiting, diarrhea, seizures, and difficulty feeding and sleeping. Although morphine may be given to a baby, there is no therapeutic level of heroin. Heroin is a poison because there is no "upside" to it and it can hurt or kill people. A baby going through withdrawal requires hospitalization, and might need small amounts of morphine to wean off the opiate addiction. Methamphetamine makes the heart race, increases blood pressure, and can also cause seizures. There is no therapeutic dosage of methamphetamine, but one byproduct of it, amphetamine, can be prescribed for certain conditions, such as attention deficit disorder. Methamphetamine is a poison because "it can hurt or kill someone without a therapeutic purpose."

Dr. Crawford-Jakubiak reviewed the records in this case, showing that other than a prenatal visit in February, there was no other prenatal care; the baby died on the fifth day of life. The baby had a diaper rash which usually occurs in older babies; he had not seen one in a baby this age in his 25 years as a physician, and thought it was caused by the use of Clorox bleach wipes of the kind that he saw in photographs of the hotel room. These wipes were not designed for cleaning skin.

In Dr. Crawford-Jakubiak's view, the baby died from respiratory failure. Lividity showed she had been face-down after death; a face-down position is dangerous at that age, as is co-sleeping. Morphine in her system could have been "enough to knock her over the edge." Other factors could be seizures from heroin withdrawal, or a very high bilirubin level (from jaundice), or an infection (possibly from a non-sterile Buck knife used to cut the umbilical cord), possible hypothermia, and hypoglycemia from feeding problems associated with heroin withdrawal. He understood the baby tested positive for opiates and marijuana, with the opiate use continuing through pregnancy and after birth. On cross-examination he explained that he thought the baby had withdrawal in part based on what he was told, that the mother used heroin and methamphetamine before and after birth of the baby. SIDS was not an answer here, as that is a term for the unexplained death of a baby who is otherwise healthy and normal.

When asked what most likely contributed to death, Dr. Crawford-Jakubiak answered: "To me, the most likely explanation is something that caused respiratory arrest. Again, the three things that are most problematic are the face down position, the presence of the morphine in her body and the co-sleeping." The baby had been born close to term and "died five days later face down with morphine onboard, sleeping with an adult." On cross-examination he testified that any one of those three factors alone could have killed the baby.

B. *Burden and Standard of Review*

"When there are multiple concurrent causes of death, the jury need not decide whether the defendant's conduct was the primary cause of death, but need only decide whether the defendant's conduct was a substantial factor in causing the death. [Citations.] [¶] Further, proximate causation requires that the death was a reasonably foreseeable, natural and probable consequence of the defendant's act, rather than a remote consequence that is so insignificant or theoretical that it cannot properly be regarded as a substantial factor in bringing about the death." (*People v. Butler* (2010)

187 Cal.App.4th 998, 1009-1010.) But-for causation is not required and as " 'long as the jury finds that without the criminal act the death would not have occurred when it did, it need not determine which of the concurrent causes was the principal or primary cause of death.' [Citation.]" (*People v. Jennings* (2010) 50 Cal.4th 616, 643-644; see *People v. Catlin* (2001) 26 Cal.4th 81, 155.)[2]

" 'On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) Sufficient evidence " ' "reasonably inspires confidence" ' . . . and is 'credible and of solid value.' [Citations.]" (*People v. Raley* (1992) 2 Cal.4th 870, 891.) Generally, as defendant concedes (AOB 38), the testimony of a single witness is sufficient to prove any fact. (See *People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) But an expert opinion based on speculation or unsupported assumptions cannot provide substantial evidence. (See *People v. Wright* (2016) 4 Cal.App.5th 537, 545-546; *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1134-1136.)

C. *Analysis*

Defendant points to ambiguities and inconsistencies in the testimony of the three experts whose testimony we have summarized, *ante*. The toxicologist (Chan-Hosokawa)

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[2] The jury was instructed with CALCRIM No. 240 as follows: "An act or omission causes injury or death if the injury or death is the direct, natural, and probable consequence of the act or omission and the injury or death would not have happened without the act or omission. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence. [¶] There may be more than one cause of injury or death. An act or omission causes injury or death, only if it is a substantial factor in causing the injury or death. A substantial factor is more than a trivial or remote factor. However, it does not have to be the only factor that causes the injury or death."

testified no marijuana was detected, while Dr. Crawford-Jakubiak understood marijuana had been detected. Although Dr. Crawford-Jakubiak listed three factors causing death, including morphine in the baby's system, he then testified that any one of those factors could alone have caused death, including co-sleeping and the position of the baby. Dr. Ogan testified that the cause of death was polypharmacy by morphine (derived from heroin) and methamphetamines. Although he mentioned the face-down position, he did not include that as a likely cause of death, and he found no obvious signs of co-sleeping.

Defendant contends that no medical expert clearly testified that death was caused by drugs. Defendant discounts Dr. Crawford-Jakubiak's testimony because he admitted that any of three things could alone have killed the baby, co-sleeping, position, or morphine in the system, and had also indicated there were other possibilities, including jaundice, infection, hypothermia, hypoglycemia, and low blood pressure. Defendant contends Dr. Ogan's opinion was speculative because he testified either drug *could* kill, not that either drug *would* kill, and he did not clearly rule out co-sleeping that might not leave marks, did not clearly explain why he rejected dehydration as a cause, and did not credibly rule out SIDS.

But we must look to *all* the evidence, including the non-expert evidence, and draw all reasonable inferences therefrom in the light most favorable to the verdict to determine whether there is substantial evidence of causation. There is no requirement that causation be proven conclusively by any one witness or by expert testimony. Although Dr. Crawford-Jakubiak listed a number of *possible* factors, when asked what *most likely* killed the baby, he answered "the three things that are most problematic are the face down position, the presence of the morphine in her body and the co-sleeping." Although he conceded any one of those could kill, his testimony corroborates Dr. Ogan's opinion that the cause of death was drugs. His testimony was also sufficient to exclude various other theoretical contributory causes of death (jaundice, dehydration, etc.).

Dr. Ogan's opinion narrowed down to one--drugs--the three likely causes of death as described by Dr. Crawford-Jakubiak. We are not persuaded by defendant's contention that Ogan's opinion was speculative and therefore unworthy of credence. Ogan had the training and experience to determine the cause of death and performed a thorough autopsy, including collecting information to learn the circumstances surrounding the death. He tested the victim's urine and found it was positive for opiates. He learned the toxicology results from the samples he sent in. He knew the effects on the body of both heroin and methamphetamine; he testified each of those drugs can kill on its own, and there was no safe amount for an infant. He ruled out SIDS, co-sleeping, and jaundice. There were some marks on the baby's face and perhaps not all co-sleeping deaths leave marks, but that does not show that Dr. Ogan's opinion that co-sleeping was *not* a cause was speculative, as defendant contends. The fact that Dr. Ogan found no conclusive objective sign to prove which drug or drugs caused death does not mean he simply reasoned that the presence of drugs in the baby's system meant the drugs must have caused death, as defendant contends. As explained, he ruled out other causes. Nor does the fact that he did not testify either heroin or methamphetamine *always* kills mean his opinion was speculative. Dr. Ogan explained the effects of both drugs and testified neither was safe for administration to a baby.

Defendant points to a passage of cross-examination (albeit without providing a record citation, cf. *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856) regarding co-sleeping. Trial counsel went over the testimony about marks on the face which Dr. Ogan conceded "sometimes" occur in co-sleeping deaths, and asked Ogan whether the baby could have been smothered by being face-down on a pillow, i.e., something soft enough so that it would not leave facial marks.[3] Then Ogan was asked:

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[3] We note defendant told officers the baby had been on her *back* in the bed before defendant woke up and found her not breathing.

"Q. Would you expect to see bruising if a child was pushed into a pillow during [co-sleeping]?

"A. Sir, I am not quite sure about what you want me to answer. But what I do have here is a child who had significant levels of two very toxic drugs. I could not ignore those drugs.

"Q. You, sir, are not a toxicologist; is that right?

"A. But I know enough of that subject to do my job competently."

Contrary to defendant's view, we do not interpret this passage to mean Ogan blindly reasoned that the mere *presence* of drugs meant drugs *caused* the baby's death. As we have explained, Ogan testified why he considered and rejected other possible causes. Although he may not have definitively ruled out every conceivable alternative explanation for the baby's death, his medical opinion as to the cause of death was not speculative. Its weight was for the jury to determine.

Viewing all reasonable inferences in favor of the verdict, there was substantial evidence to show that drugs administered by defendant caused her baby's death.

II

Murder by Poison

In two separate but connected arguments, defendant contends no substantial evidence shows that defendant willfully, deliberately, and premeditatedly administered poison to the victim, and that the trial court should have included these elements in the jury instructions.

The People argue that defendant forfeited this claim by not objecting or proposing other instructions in the trial court. But *if* defendant's claim had merit, it would mean the jury had not been told it had to find all the elements of the offense. "Instructions regarding the elements of the crime affect the substantial rights of the defendant, thus requiring no objection for appellate review." (*People v. Hillhouse* (2002) 27 Cal.4th 469, 503.) We reach the merits, but find no error, as we explain.

Defendant bases her arguments on the flawed premise that even in a case alleging murder by poison the People must not only prove that the killing was murder, but also prove the murder was willful, deliberate, and premeditated. But binding authority rejects this view: The People need only prove that the killing was caused by administration of poison, and that it was done with malice; such a killing is first degree murder as a matter of law.

At the time of the killing in this case (November 3, 2014), the first paragraph of Penal Code section 189[4] read as follows:

> "All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree." (Stats. 2010, ch. 178, § 51.)[5]

People v. Rodriguez (1998) 66 Cal.App.4th 157 (*Rodriguez*) carefully parsed this statute and explained as follows:

> "Section 189 establishes three categories of first degree murder. . . . Section 189 . . . first establishes a category of first degree murder consisting of various types of premeditated killings, and specifies certain circumstances (use of explosives or armor-piercing ammunition, torture, etc.) *which are deemed the equivalent of premeditation*. Section 189 secondly establishes a category of first degree felony murders (murders perpetrated during felonies or attempted felonies such as arson, rape, carjacking, etc.). Finally, section 189 establishes a third category consisting of only one item, intentional murder by shooting out of a

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[4] Further undesignated statutory references are to the Penal Code.

[5] That paragraph was slightly rewritten and designated as subdivision (a) in the current version (Stats. 2018, ch. 1015, § 3), but those changes are not significant for this appeal.

vehicle with intent to kill." (*Rodriguez, supra,* 66 Cal.App.4th at pp. 163-164, italics added, fn. omitted.)

Thus, so long as the killing is shown to be murder (i.e., done with malice, express or implied), if one of the listed *methods* was used, that equates to premeditation. "As with murder by lying in wait [citation] and murder by torture [citation], murder by poison does not require additional proof of premeditation and deliberation. [Citation.]" (1 Witkin & Epstein, Cal. Criminal Procedure (4th ed. 2012) Crimes Against the Person, § 146(3), p. 952.) This flows from the structure of section 189, which first lists specific methods of killing that can lead to first degree murder liability, then states "*any other kind* of willful, deliberate, and premeditated killing" is also first degree murder. (See *Rodriguez, supra*, 66 Cal.App.4th at pp. 163-164.) The fact that, for the People to show *implied malice* the defendant must have "deliberately administered the poison with conscious disregard" of the danger (*People v. Mattison* (1971) 4 Cal.3d 177, 184), does not mean the People have to prove the defendant acted with a deliberate and premeditated intent to kill (which would also show *express malice*), as defendant suggests.

"When a murder is accomplished by means of poison, additional proof of premeditation and deliberation is not required to establish it as first degree murder. [Citations.]" (*People v. Diaz* (1992) 3 Cal.4th 495, 538; see *People v. Catlin*, *supra*, 26 Cal.4th at p. 149 ["implied malice murder normally constitutes only murder in the second degree" but murder by poison "constitutes a first degree murder whether malice is express or implied"]; *People v. Thomas* (1953) 41 Cal.2d 470, 478 (conc. opn. of Traynor, J.) ["any question as to the defendant's willfulness, deliberation, and premeditation is taken from the trier of fact by force of the statute"]; cf. *People v. Laws* (1993) 12 Cal.App.4th 786, 793 ["An accused who committed murder perpetrated by means of lying in wait is guilty of first degree murder even if the accused did not have a premeditated intent to kill"].)

Defendant's view rests in part on a misreading of cases involving torture-murder. For example, in *People v. Cook* (2006) 39 Cal.4th 566, our Supreme Court summarized the elements of torture-murder as follows: "The elements of torture murder are: (1) acts causing death that involve a high degree of probability of the victim's death; and (2) a willful, deliberate, and premeditated intent to cause extreme pain or suffering for the purpose of revenge, extortion, persuasion, or another sadistic purpose. [Citing, inter alia, § 189.] The defendant need not have an intent to kill the victim [citation], and the victim need not be aware of the pain. [Citations.]" (*Id*. at p. 602.) But contrary to defendant's reading, *Cook* did not hold the People had to prove torture-*murder* was premeditated. Instead, *Cook* held a torture-murder case required proof of a premeditated intent to inflict extreme and prolonged pain, i.e., to prove that *torture* (as defined) was used. (See also *People v. Edwards* (2013) 57 Cal.4th 658, 715-716; *People v. Davenport* (1985) 41 Cal.3d 247, 267-269.)

Thus, *Cole* and the other cases cited by defendant do not change the reading of section 189 from that which we have explained--once one of the listed methods of murder is proven, a separate finding or proof of premeditation is not required.

There is language in one case relied on by defendant that--if read casually--seems to support defendant's view: "In labeling torture as a 'kind' of premeditated killing, the Legislature requires the same proof of deliberation and premeditation for first degree torture murder that it does for other types of first degree murder." (*People v. Steger* (1976) 16 Cal.3d 539, 545-546.) But *Steger* went on to explain that "murder by means of torture under section 189 is murder committed with a wilful, deliberate, and premeditated intent to inflict extreme and prolonged pain," and emphasized that "[w]e do not hold that a defendant must have had a premeditated intent to kill in order to be convicted of murder by means of torture; such an interpretation would render superfluous the specific inclusion of murder by torture in section 189. A defendant need not have any intent to kill to be convicted of this crime [citation], but he or she must have the defined intent to

inflict pain." (*Id.* at p 546.) And a case decided not long after *Steger* was decided held: "Our use, in *Steger*, of the words 'wilful, deliberate, and premeditated intent to inflict extreme and prolonged pain,' refers only to the requirement that before the trier of fact may convict a defendant of first degree murder by torture there must be found a cold-blooded, calculated intent to inflict such pain for one of the specified purposes. Inasmuch as the Legislature has equated this state of mind with the wilful, deliberate, premeditated intent to kill that renders other murders sufficiently culpable to be classified as first degree murder, it is unnecessary in torture-murder to also find that the killing itself was 'wilful, deliberate, and premeditated.' " (*People v. Wiley* (1976) 18 Cal.3d 162, 173, fn. 4.) Thus, *Steger* did not hold first degree murder by one of the listed methods in section 189 also requires proof of premeditation and deliberation.

As for the sufficiency of the evidence that defendant murdered her baby, *People v. Jennings, supra,* 50 Cal.4th 616, bears factual similarities to this case. In *Jennings*, the parents gave their five-year-old child over-the-counter sleeping pills from a box warning that those pills were not for children under 12, and gave him Vicodin and Valium--prescription drugs not prescribed for the child. (*Id.* at pp. 631, 633-634, 640-641.) In rejecting the father's claim of insufficient evidence of first degree murder, the court explained: "Defendant does not dispute that the natural consequences of administering three powerful sedatives to a five-year-old child are dangerous to human life, or that furnishing the drugs to [the child] was a cause of his death. The only issue in terms of implied malice, therefore, is whether there was sufficient evidence for a reasonably jury to have found that defendant ' "had full knowledge that his conduct endangered the life of decedent, but that he nevertheless deliberately administered the poison with conscious disregard for that life." [Citation.]' [Citation.]" (*Id.* at p. 640, partly quoting *People v. Blair* (2005) 36 Cal.4th 686, 745, overruled on another point by *People v. Black* (2014) 58 Cal.4th 912, 919-920.) The evidence in this case is similar, with defendant knowingly

and repeatedly transmitting heroin and methamphetamine to her baby, while aware of the risk and ignoring warnings from others to seek medical attention for her baby.

Accordingly, we reject defendant's contentions as to the adequacy of the jury instructions and proof.

III

Clerical Errors

The abstracts of judgment and the minutes of sentencing must fully and accurately capture all components of a defendant's sentence as pronounced by the trial court. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Zackery* (2007) 147 Cal.App.4th 380, 385-389.) Defendant identifies a discrepancy between the reporter's transcript and clerk's transcript regarding the parallel restitution and parole revocation restitution fines (§§ 1202.4, 1202.45), and contends the lower amount reflected by the reporter's transcript controls. Given all of the circumstances, we disagree.

The probation report recommended the fines be set at the maximum, $10,000. The determinate abstract of judgment shows both fines as $10,000. The clerk's minute orders both from the original and the amended sentencing hearings each show both fines as $10,000.[6]

The reporter's transcript from the only hearing that addresses this issue shows that after the trial court imposed the prison sentence and inquired about any trailing cases, the following occurred:

> "THE COURT: [D]o Counsel waive formal reading and advisement of all code sections that go along with the fines and fees?
>
> "[Defense counsel]: So waived.

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[6] A new sentencing order issued and signed by the trial court on January 30, 2019, also shows the fines at issue here to be $10,000.

"THE COURT: The Defendant will be ordered to pay a restitution fine in the amount of $1,000 pursuant to . . . section 1202.4.

"There is an additional parole revocation restitution fine in the same amount and that will be stayed pending service of the sentence."

It is clear there is an inconsistency as defendant contends.

But our Supreme Court rejects the view that "inconsistency must necessarily be resolved in favor of the reporter's version" (*People v. Smith* (1983) 33 Cal.3d 596, 599), and holds that "a record that is in conflict will be harmonized if possible. [Citation.] If it cannot be harmonized, whether one portion of the record should prevail as against contrary statements in another portion of the record will depend on the circumstances of each particular case. [Citation.]" (*People v. Harrison* (2005) 35 Cal.4th 208, 226.)

Here, it is possible the trial court meant to impose and did impose a fine of $1,000 but the clerk assumed the court would impose the recommended $10,000 and inaccurately recorded the judgment multiple times. It is also possible that the court said and meant to say "$10,000" but the court reporter incorrectly transcribed what the court said. The latter possibility best harmonizes the conflict in this record.

First, although a trial court has discretion, the amount of the fines "shall be . . . commensurate with the seriousness of the offense." (§ 1202.4, subd. (b)(1) [as to restitution fine]; see § 1202.45, subd. (a)(1) [parole revocation restitution fine to be in the "same amount" as restitution fine].) Counsel does not point to any *reason* the court would have imposed less than the maximum fine for first degree murder, the most serious of offenses. Second, as the Attorney General points out, although there was a second sentencing hearing a week after this hearing, defense counsel did not claim that there was an error in the minutes from this hearing. Third, the trial judge (rather than the clerk) signed both the original and the two amended minute orders.

All of the circumstances indicate that the court reporter mistranscribed what the trial court said, and that the final minute order (one of three signed by the court) and the determinate abstract of judgment correctly reflect the fines imposed by the court.

IV

Youthful Offender Remand

Defendant contends that because of her age (21 at the time of the murder) she is entitled to a limited remand for a hearing to make a factual record that can be used at a future youth offender parole hearing pursuant to section 3051. (See *People v. Franklin* (2016) 63 Cal.4th 261, 276-284.) Defendant concedes that statute was amended to include persons of her age (at the time of the crime) and that *Franklin* was decided before the sentencing hearing, but argues that no reference to that statute was made at sentencing and that her trial counsel did not submit relevant information at sentencing. The People in part reply that evidence about defendant's difficult youth and other circumstances was presented in a detailed probation report and the interrogations introduced at trial. The People argue: "It is understandable . . . why appellant did not endeavor to expand the record. For it is hard to image what more appellant could have added to the record in this case." Defendant does not contest the People's summation of the sentencing evidence in her reply brief. We agree that much evidence about defendant's youth and circumstances is already in the record below. Defendant does not explain what more she would add.

Thus, this case is controlled by our opinion in *People v. Woods* (2018) 19 Cal.App.5th 1080. In *Woods* we declined to order a *Franklin* remand to a defendant who was sentenced after youth offender parole hearings became a part of California law. We reasoned that although Woods was sentenced before our Supreme Court decided *Franklin*, "that makes no difference given that it was not the decision in *Franklin* that gave rise to defendant's right to a youth offender parole hearing. Instead, as we have explained, it was the amendment to . . . section 3051 that took effect months before defendant's sentencing hearing that gave rise to that right, and on the record here there is

no reason to believe that defense counsel did not have every reasonable opportunity and incentive to make an adequate record for defendant's eventual youth offender parole hearing." (*Id*. at p. 1089.)

Sentencing in this case was held on November 13, 2017, both after the relevant statutory amendments expanded coverage to embrace defendant and more than a year after *Franklin* was decided. Therefore, as in *Woods*, defendant had a "sufficient opportunity to make a record of information relevant to [her] eventual youth offender parole hearing." (*People v. Franklin, supra*, 63 Cal.4th at p. 284.) She appears to have done just that.

Accordingly, no *Franklin* remand is required in this case.

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Hull, Acting P. J.

/s/
Butz, J.